

SERVICE DATE – OCTOBER 13, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 625X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN PRESTON COUNTY, WV

Decided: October 12, 2004

By decision and notice of interim trail use or abandonment(NITU) served on April 9, 2004 (April 2004 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by CSX Transportation, Inc. (CSXT) of a 14.3-mile line of railroad extending from milepost BAJ 0.0 at Rowlesburg to milepost BAJ 14.3 near Albright in Preston County, WV, subject to trail use, public use,¹ environmental, and standard employee protective conditions. The April 2004 decision authorized Friends of the Cheat (Friends) to negotiate with CSXT for interim trail use/rail banking for the 14.3-mile line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The NITU negotiating period expired on October 6, 2004. The April 2004 decision also provided that, if consummation had not been effected by the filing of a notice of consummation by April 9, 2005, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

On October 5, 2004, CSXT and Friends filed requests for a 6-month extension of the NITU negotiating period until April 6, 2005. The parties have been unable to finalize negotiations, but both state that they want to continue trail use negotiations. In addition, CSXT states that the abandonment has not been consummated and requests an extension of the consummation notice filing deadline until June 6, 2005.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction

¹ The public use condition imposed in the April 2004 decision, which is limited by statute to 180 days, is scheduled to expire on November 5, 2004, and may not be extended.

and the NITU negotiating period may be extended.² Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Because an extension of the consummation notice filing deadline and the additional 6-month NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act, and the rail carrier has indicated its willingness to continue negotiations, the requested extensions will be granted. See Policy Statement on Rails to Trails Conversions, Ex Parte No. 274 (Sub-No. 13B) (ICC served Feb. 5, 1990). Accordingly, the NITU negotiating period will be extended until April 6, 2005,³ and the consummation notice filing deadline will be extended until June 6, 2005.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources

It is ordered:

1. The request by CSXT and Friends for an additional 6-month NITU negotiating period and the request by CSXT for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended until April 6, 2005.
3. The authority to abandon must be exercised on or before June 6, 2005.

² See Rail Abandonments – Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

³ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company– Abandonment Exemption–In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

4. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary